

1 William Silverstein
2 XXXXXXXXXXXXX
3 XXXXXXXXXXXXX
4 XXXXXXXXXXXXX
in propria persona

5 CALIFORNIA SUPERIOR COURT
6 COUNTY OF LOS ANGELES

8 WILLIAM SILVERSTEIN, an individual,
9 Plaintiff,

10 vs.

12 WORLD WIDE WEB ENTERPRISES, LC,
13 ROBERT SMOLEY, DARIN GREY, AND DOES
14 1-50

15 Defendants.

Case No.: BC326033

**VERIFIED COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF for:**

1. **Violation of the CAN-SPAM ACT of 2003.**
2. **Violation of California Business and Professional Code § 17538.45**
3. **Violation of California Business and Professional Code § 17529.5**
4. **Trespass to chattels**
5. **Libel Per Se**

Jury Trial Requested

19
20 **SUMMARY**

21
22 1. This is a case where the defendants caused more than 800 pieces of unsolicited
23 commercial e-mail (“spam”) to be received by the Plaintiff, all of which contains falsified
24 header information and are unwanted. After the Plaintiff complained to the defendants of their
25 activities, the defendants sent thousands of spams to others using the plaintiff’s domain as part
26 of the return address – falsely giving the impression that Plaintiff either sent or endorsed them.
27 Defendant sent these e-mails using Plaintiff’s domain name with the intent of causing cause
28 harm to the Plaintiff’s systems and reputation.

1 **Plaintiff alleges as follows:**

2 **THE PARTIES**

3 2. Plaintiff WILLIAM SILVERSTEIN is an individual operating as a sole proprietor
4 under the laws of the State of California and qualified and doing business as "WILLIAM
5 SILVERSTEIN," with a principal place of business in Los Angeles, California. Plaintiff
6 provides registered users the ability to send or receive electronic mail through equipment
7 located in the State of California, and operates equipment that acts as an intermediary in
8 sending and receiving electronic mail.

9 3. Plaintiff owns and maintains computers and other equipment that process
10 electronic mail messages and allow for exchange of electronic mail messages by registered
11 users. Electronic mail sent to and from Plaintiff's registered users is process though and stored
12 on equipment located within the State of California. Plaintiff is a provider of "Internet access
13 service" as defined by 15 U.S.C. § 7702(11) and an "electronic mail service provider" as
14 defined by California Business and Professions Code § 17529.1(h) and § 17538.45(a)(3).
15 Plaintiff's service allows registered users to exchange electronic mail messages with any other
16 Internet user who has an Internet electronic mail address anywhere in the world.

17 4. Plaintiff is informed and believes and thereon alleges that at all times relevant
18 hereto Defendant World Wide Web Enterprises, LC, was and is a limited liability company
19 duly organized and recognized under the laws of the State of Florida with a principal place of
20 business in Weston, Florida.

21 5. Plaintiff is informed and believes and thereon alleges that at all times relevant
22 hereto, Defendant Robert Smoley is an individual with a place of business in Hallandale,
23 Florida.

24 6. Plaintiff is informed and believes and thereon alleges that at all times relevant
25 hereto, Defendant Darin Grey, is an individual with a place of business in Hallandale, Florida.

26 7. Plaintiff is ignorant of the true names and capacity of Defendants sued herein as
27 DOES 1-50, inclusive, and therefore sue those Defendants by such fictitious names. Plaintiff
28 will amend this complaint to allege their true names and capacities when ascertained.

8. Plaintiff is informed and believes and thereon alleges that each of the fictitiously
named Defendants is responsible in some manner for the occurrences herein. These
occurrences are the proximate cause of damages to Plaintiff.

1 19. Plaintiff is informed and believes and therefore alleges that Defendants' knowingly
2 and willfully transmits e-mail advertisements in a manner specifically designed to bypass
3 filters intended to identify and/or delete e-mail advertising ("spam filters").

4 20. Plaintiff is informed and believes and thereupon alleges that Defendants
5 intentionally created and sent e-mails consisting of commercial advertising that are designed
6 to deceive the recipient as to the actual origin and contents, so that the recipient must open,
7 decode, and read the e-mail determine the true nature of the e-mail.

8 21. Plaintiff is informed and believes, and therefore alleges that Defendants sent the
9 complained of spam e-mails knowing that the spam were not welcome, not wanted, and in
10 violation of the law.

11 22. Plaintiff is informed and believe that the Defendants, either directly or through
12 their agents, use foreign servers, hijacked servers, and stealth mail programs to hide their
13 identity and to bypass spam filters.

14 23. Plaintiff is informed and believe that the Defendants have a high degree of control
15 over any agents that have been contracted and paid to send advertising through e-mail.

16 24. Plaintiff is informed and believe that the Defendants selected agents to send the
17 e-mail programs based on the agents' ability to hide the source of the e-mails and the identity
18 of the Defendant.

19 25. Plaintiff is informed and believe that and therefore alleges that each and every of
20 spam e-mails sent by the Defendants and received by the Plaintiff:

- 21 a. Failed to contain defendants' physical postal address.
- 22 b. Contained Deceptive header and routing information.
- 23 c. Were transmitted through the Plaintiff's computer facilities.
- 24 d. Were relayed through Plaintiff's servers, without authorization.

25 26. Plaintiff is informed and believe that and therefore alleges that on or about October
26 15, 2004, Defendants sent more than 2,100 unsolicited commercial e-mails using to other
27 internet users, using Plaintiff's domain for the return address.

- 28 a. Each of these e-mails contained deceptive header information – the
 from address.

- 1 b. Each of these e-mails used randomly generated e-mail addresses on the
2 Plaintiff's domain as a return addresses, giving the false impression that
3 Plaintiff had initiated and endorsed the sending of these illegal e-mails.
4 c. The use of the Plaintiff's domain was not authorized by the plaintiff or
5 any authorized user of the Plaintiff's e-mail services.
6 d. Plaintiff never approved, endorsed, or gave permission to send spam
7 using his any of his domain names.
8 e. Plaintiff is informed and believes that and therefore alleges that
9 defendants knew that the sending of each of these e-mails using the
10 Plaintiff's domain would cause harm to the plaintiff.
11 f. Plaintiff is informed and believe that and therefore alleges that
12 defendants sent these e-mails with the intent of causing damage to the
13 Plaintiff.
14 g. Plaintiff is informed and believe that and therefore alleges that
15 defendants used Plaintiff's domain name to use Plaintiff's reputation of
16 opposing spam so that defendants's spam would not be caught by spam
17 filters.

17 27. As a result of the spam described in paragraph 26, Plaintiff personally received
18 over 700 "bounce backs," that were sent through Plaintiff's servers.

19 28. A "Bounce back" is an e-mail notification sent to the originator of an e-mail, that
20 the original e-mail did not reach the intended recipient.

21 29. As the Plaintiff received these "bounce backs," where the Plaintiff did not send the
22 e-mails - indicates that each of the e-mails that were bounced back contained deceptive header
23 information.

24 30. Plaintiff is informed and believe that and therefore alleges that Plaintiff received
25 over 139 spam e-mails that were sent by defendants to Plaintiff between January 1, 2004 and
26 June 1, 2004.

27 31. Plaintiff is a computer consultant who bills hourly for his consulting services.

28 32. Plaintiff only is paid when he is consulting for a client.

33. Plaintiff spent more than 30 hours identifying the bounce backs and removing the
above described bounce backs Plaintiff's inbox.

1 fraud, and malice, and in conscious disregard of the rights of Plaintiff. Plaintiff therefore is
2 entitled to and demands exemplary damages in an amount sufficient to deter the Defendants,
3 and others, from behaving in such egregious behavior.

4
5 WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as set
6 forth in the Prayer for relief.

7
8 **THIRD CAUSE OF ACTION**

9 **(Violation of California Business and Professional Code § 17529.5)**

10 44. Plaintiff hereby incorporates by reference paragraphs 1 through 43, inclusive, as if
11 the same were fully set forth herein.

12 45. Plaintiff is informed and believes and thereon alleges that Defendants have
13 willfully engaged in, and are willfully engaging in, the acts complained of with oppression,
14 fraud, and malice, and in conscious disregard of the rights of the Plaintiff. Plaintiff therefore is
15 entitled to and demands exemplary damages in an amount sufficient to deter the Defendants,
16 and others, from behaving in such egregious behavior.

17 WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as set
18 forth in the Prayer for relief.

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20 **FOURTH CAUSE OF ACTION**

21 **(TRESPASS TO CHATTEL)**

22 46. Plaintiff hereby incorporates by reference paragraphs 1 through 45, inclusive, as if
23 the same were fully set forth herein.

24 47. Plaintiff is informed and believes and therefore alleges that Defendants took
25 control of Plaintiff's servers and work stations.

26 48. Plaintiff further alleges that during the periods that Plaintiff's systems were
27 following the instructions sent by the defendants, Plaintiff was unable to access, read, or send
28 e-mail.

1 49. Plaintiff further alleges, as a result of the defendants sending the spam e-mails
2 using Plaintiff's domain name – described in paragraph 26, the Plaintiff was unable to use his
3 workstation for one week for the purpose of sending or receiving e-mail.

4 50. Plaintiff further alleges, that the Defendant's actions caused permanent and
5 continuing damage by reducing his computer systems' responsiveness, increasing maintenance
6 time, decreasing disk storage capacity, and introducing system instability.

7 51. During Defendants' unauthorized possession and control of Plaintiff's computers
8 and e-mail accounts, Plaintiff was unable to send or receive any internet e-mail.

9 52. The Defendants' unlawful use of Plaintiff's of e-mail servers has the potential of
10 preventing the Plaintiff from receiving desired e-mail communications.

11 53. Defendants' alleged actions requires Plaintiff to perform significantly more
12 computer system maintenance and increased monitoring of Plaintiff's systems to reduce the
13 risk of data loss.

14 54. Plaintiff suffered damages as a result of Defendants' wrongful conduct.

15 55. If other parties replicate the Defendants' unlawful use of the of Plaintiff's systems,
16 there is a great potential of preventing the Plaintiff from using his computer systems, receiving
17 e-mails, crashing the Plaintiff's systems, and causing permanent data loss.

18 56. Plaintiff is informed and believes and thereon alleges that Defendants have
19 willfully engaged in, and are willfully engaging in, the acts complained of with oppression,
20 fraud, and malice, and in conscious disregard of the rights of Plaintiff. Plaintiff therefore is
21 entitled to and demands exemplary damages in an amount sufficient to deter the Defendants,
22 and others, from behaving in such egregious behavior.

23 57. Plaintiff is informed and believes, and therefore alleges that the Defendants
24 trespass intentionally and regularly on many thousands of other systems, in the same way that
25 the Defendants trespasses on the Plaintiff's systems.

26 58. Plaintiff is informed and believes and therefore alleges that the Defendants will
27 continue to trespass on Plaintiff's systems in this unlawful manner unless enjoined by this
28 court. This court has legal authority to issue a permanent injunction because injunction is
necessary to prevent a multiplicity of judicial proceedings.

1 WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as set
2 forth in the Prayer for relief.

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5 **FIFTH CAUSE OF ACTION**
6 **(LIBEL and LIBEL PER SE)**

7 59. Plaintiff hereby incorporates by reference paragraphs 1 through 58, inclusive, as if
8 the same were fully set forth herein.

9 60. Plaintiff is personally associated with the sorehands.com domain.

10 61. Plaintiff is a professional software engineer.

11 62. Plaintiff, as a business hosts web sites, e-mail services, and builds web sites.

12 63. Plaintiff further alleges that Defendants sending e-mails using the sorehands.com
13 domain is a statement that Plaintiff was responsible for or endorsed the sending of these
14 aforementioned spam e-mails – stating that the Plaintiff is a spammer.

15 64. Plaintiff never has, does not, and never endorsed the sending of spam – **Plaintiff is
16 not a spammer.**

17 65. Plaintiff further alleges that the methods used in sending the spam e-mails violated
18 criminal laws – California Penal Code § 502, Computer Fraud and Abuse Act (18 U.S.C. §
19 1030), and the criminal provisions of the CAN-SPAM Act.

20 66. Plaintiff further alleges that sending of spam e-mail harms the reputation of the
21 alleged sender in their profession and business.

22 67. Plaintiff further alleges that people who send spam are hated and reviled.

23 68. Plaintiff further alleges that the published statements, in the spam e-mails, exposed
24 the Plaintiff to public hatred, ridicule or contempt in a considerable and respectable class in
25 the community.

26 69. These statements have been made and published recklessly or with actual malice.

27 70. Plaintiff further alleges that defendants' actions constitutes libel.

28 71. Plaintiff further alleges that defendants' actions constitutes libel per se.

WHEREFORE, Plaintiff prays for judgment against all Defendants herein for damages as set
forth in the Prayer for relief.

Prayer for Relief

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them as follows:

- a. An Order of this Court enjoining Defendants, and each of them, and their agents, affiliates, servants, employees, and all persons acting under, in concert with, or for them, from sending unsolicited commercial e-mail to Plaintiff or Plaintiff's servers.
- b. An Order for this Court enjoining Defendants, and each of them, and their agents, affiliates, servants, employees, and all persons acting under, in concert with, or for them, from using Plaintiff's domain names in any form of advertising, solicitations, or e-mails.
- c. Statutory damages, under CB&PC § 17529.5 of \$1,000,000 for the spam e-mails described in paragraph 26.
- d. Statutory damages, under CB&PC § 17529.5 of \$139,000 for the spam e-mails sent between January 1, 2004 and September 30, 2004.
- e. Statutory Damages, under CB&PC § 17538.45, of \$2,200 for the spam sent in 2003.
- f. Statutory Damages, under the CAN-SPAM act, of \$251,700..
- g. General damages in an amount to be determined at trial.
- h. Punitive damages in an amount to be determined at trial, for an amount not to be less than \$4,000,000.
- i. Attorney fees and costs as allowed by law.
- j. For other and further relief as the Court may deem just and proper.

Dated: _____

By _____

William Silverstein
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VERIFICATION

The undersigned, for himself, declares:

I am the plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. With respect the causes of action alleged by me, the same is true of my own knowledge, except as those matters which are therein stated on information and belief, and, to those matters, I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____

By _____

William Silverstein